

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DAVID EASLEY,

Plaintiff Case No. 1:06-cv-865

VS

MARY HIGHFIELD, et al.,
Defendants

REPORT AND RECOMMENDATION
Dlott, J.
Hogan, M.J.

Plaintiff filed this action pro se under 42 U.S.C. § 1983 alleging a violation of his constitutional rights.

Plaintiff initiated this action by filing a complaint in this Court on December 19, 2006. (Doc. 1). However, Defendant Highfield has not been served with the Complaint in this matter. Proper service of process is required in order for this Court to obtain in personam jurisdiction over each defendant. *O.J. Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003). Plaintiff bears the burden of exercising due diligence in perfecting service of process and of showing that proper service has been made. *Habib v. General Motors Corp.*, 15 F.3d 72, 74 (6th Cir. 1994); *Jacobs v. University of Cincinnati*, 189 F.R.D. 510, 511 (S.D. Ohio 1999).

Rule 4(m), Fed. R. Civ. P., provides, in pertinent part, as follows:

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. . . .

Fed. R. Civ. P. 4(m).

On January 8, 2009, this Court ordered Plaintiff to show cause, in writing and within twenty (20) days, why the Complaint should not be dismissed against Defendant Highfield for failure of service. To date, Plaintiff has failed to respond to the Court's show cause order.

Accordingly, **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint be dismissed without prejudice for failure of service. As Defendant Highfield is the only defendant remaining in this matter, the Court **FURTHER RECOMMENDS** that this case be **TERMINATED** upon the Court's docket.

Date:

2/12/09



Timothy S. Hogan
United States Magistrate Judge

**NOTICE TO THE PARTIES REGARDING THE FILING
OF OBJECTIONS TO THIS R&R**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten (10) days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen (13) days (excluding intervening Saturdays, Sundays, and legal holidays) in the event this Report is served by mail, and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation are based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten (10) days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

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